

[Advisory Opinion 1995-12]

July 11, 1995

[Name1 withheld]

Re: Request for Advisory Opinion

Dear [Name1 withheld]:

You have requested an advisory opinion from the Ethics Commission concerning the fundraising efforts of the Montgomery County Community Partnership (MCCP), which works in conjunction with the Montgomery County Substance Abuse Program of the Department of Family Resources (DFR). Your written request and the additional comments of Martha Rosacker of DFR at the June meeting of the Ethics Commission provided the following information.

The MCCP was established in 1991 by a federal grant to the County with the purpose of working on a variety of substance abuse related issues for youths and adults. The MCCP is a community-wide organization that has pursued a goal of becoming self-sustaining. The current federal grant requires that the leadership of the MCCP include the local representatives on the MCCP Board. The local representatives who have participated during the initial phases of the program include the Office of the County Executive, the County Council, the Department of Family Resources, the Montgomery County Police Department, and Montgomery County Public Schools. The MCCP has reached a point where it is ready to pursue self-sustaining funding, beginning with seeking a County contract, and has obtained a designation as a 501(c)(3) organization for IRS purposes, which renders it a private non-profit organization. It is the transition from a government office to a private entity that presents the questions concerning the continued participation of County officials and employees in the MCCP and especially as the MCCP increases its fundraising activities to seek contributions from larger businesses in the area. The MCCP meets approximately every six months and all members of the MCCP Board are listed on the letterhead for the Board, which is then used for mailings in its fundraising efforts.

In light of the benefits of the program and the continued involvement of the local government representatives, you have asked whether there is some limited capacity in which the local officials may remain a part of the MCCP Board without presenting a conflict of interest under the Ethics Law. The Commission has determined that there are three issues that must be addressed in evaluating your request: (1) the extent of the voting authority that may be exercised by the local MCCP Board; (2) the extent to which these officials may participate in fundraising on behalf of the MCCP; and (3) the use of County titles on MCCP letterhead.

The Montgomery County Ethics Law provides that a public employee must not participate in any matter that the employee knows or reasonably should know involves a business in which the public employee is an officer, director, trustee, partner or

employee. An exception exists, however, when the public employee discloses the relationship, is not compensated by the organization, and has no managerial responsibility or voting authority on matters as a member of the organization's governing body. §§19A-11(a)(2)(A) and 19A-11(b)(5) of the Montgomery County Code, as amended. The use of County or agency titles in connection with any private enterprise, however, must be expressly authorized by the Chief Administrative Officer. §19A-14(b) of the Montgomery County Code.

In addition, the Ethics Law provides specific parameters for the solicitation of gifts, which should be reviewed to discern the extent to which any public employee may participate in the fundraising efforts of the MCCP. §19A-16 of the Montgomery County Code, a copy of which is attached for your reference. Generally, a public employee must not solicit a gift from any person who does business with the County agency with which the public employee is affiliated and must not solicit a gift while identifiable as a County employee. Moreover, the solicitation must not be conducted during official work hours or utilizing County supplies and equipment. There are instances in which a public employee may solicit gifts pursuant to an Executive Order when the County and a private non-profit organization are formally cooperating on a particular project. §19A-16(b)(3) of the Montgomery County Code.

Based upon these provisions of the Ethics Law, the Ethics Commission has determined that the County Executive and County Council representatives may participate on the MCCP Board as ex officio members, that is, non-voting members. This should accommodate the interests of both the MCCP and the local elected officials. The other public employees representing the County agencies may participate on the Board and vote on all matters except those which involve their particular agency.

The participation of the County employees in the fundraising efforts of the MCCP presents a more difficult issue and more information would be needed to determine whether any solicitation by the County members is permitted by the Ethics Law. Generally, however, no direct solicitation would be permitted from a business with which the County has a contract. If the MCCP and the County are formally cooperating in a joint program, an Executive Order permitting solicitations may be appropriate. The Department of Family Resources may wish to speak with its assigned legal advisor in the Office of the County Attorney for further advice on preparing such an order.

Finally, unless and until express approval is obtained from the Chief Administrative Officer, the County agencies and offices listed on the letterhead of the MCCP Board should be removed. §19A-14 of the Montgomery County Code.

If you have any other questions regarding this decision, please feel free to contact the Ethics Commission.

Sincerely
[signed]
JAY L. COHEN, Chair

Montgomery County Ethics Commission
Enclosure

cc: Martha Rosacker, Montgomery County Substance Abuse Coordinator,
Department of Family Resources
Barbara McNally, Executive Secretary, Montgomery County Ethics Commission